REMARKS

Claims 1-2, 4-22, 33-34, and 36-60 are currently pending in the Application. Claims 1-2, 4, 6-10, 13-14, 16, 21, 33-34, 36, 38-42, 46, and 53-55 are currently amended to clarify what Applicants regard as the claimed subject matter(s) as embodied in these claims, without acquiescence in the cited basis for rejection or prejudice to pursue the original claims in a related application. Claims 61-64 are new. No new matter has been added.

I. Objections to the Claims

A. Claims 1, 9, and 55 stand objected to as being allegedly directed to non-statutory class.

B. Claims 41 and 55 stand objected to. The final Office action suggests replacing the claim language "tangible volatile or non-volatile medium usable by a processor" with "computer usable storage medium". Claim 41 also stands objected to as containing a minor informality.

Without acquiescing in the cited basis for objection or prejudice to pursue the original claims 41 and 55 in a related application, Applicants respectfully submit that claims 41 and 55 are currently amended to recite "computer usable storage medium" and are thus believed to have rendered the objection moot.

Claim 41is also currently amended to recite "generating a simulation model in a high level language format by disassembling a binary code" and is believed to have cured the minor informality.

II. Rejections of the Claims under 35 U.S.C. § 112, First Paragraph

A. Claim 41 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description for the claimed limitation of "generating a simulation model by disassembling a binary code into the simulation model in a high level language format . . . ." Applicants respectfully disagree.

MPEP § 2163 also indicates that "the essential goal of the description of the invention requirement is to clearly convey the information that an application has invented the subject matter which is claimed," citing *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977), and that "[t]he fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed." Citing *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117 (emphasis added.) "Another objective is to put the public in possession of what the application claims as the invention." Citing *Regents of the University of California v. Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997).

Applicants respectfully point to the following paragraphs which provide some exemplary disclosure for the above claimed limitations in some embodiments. Applicants further note that these paragraphs are provided below for the ease of explanation and illustration only and are not intended to limit the scope of the claims or the subject matters of various embodiments of the invention.

For example, ¶ [0012] teaches that "binary code is disassembled into assembler code for simulation purpose." ¶ [0030] also discloses that "[t]he compiler generates an assembly-language representation of the software program ("assembler") at step 220. This assembler is fed into a translator at step 230. The translator translates the assembler into a simulation model, which comprises an assembler-level representation of the software program, expressed in a high-level programming language . . . ." In addition, ¶ [0031] teaches that "binary code is disassembled into assembler, and this assembler is provided to the translator", the output of which is the "simulation model". Applicants respectfully submit that at least these paragraphs convey with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants invented and were in possession of the invention as now claimed in claim 41, and that these paragraphs clearly put the public in possession of what the application claims as the invention.

As such, Applicants respectfully submit that these passages provide clear support for the claimed limitation of "generating a simulation model by disassembling a binary code into the simulation model in a high level language format . . ." of claim 41 and thus satisfy the written description requirement of 35 U.S.C. § 112, first paragraph.

Nonetheless, claim 41 is currently amended to recite "generating a simulation model in a high level language format by disassembling a binary code . . ." to clarify what Applicants regard as the claimed invention as embodied in claim 41, without acquiescence in the cited basis for rejections or prejudice to pursue to the original claim 41 in a related application. Applicants respectfully submit that the current amendment has rendered the rejection moot.

B. Claim 55 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description for the claimed limitation of "processing, by using a processor, the data structure to refine accuracy of an assembler-level software simulation model by generating the assembler-level software simulation model based on the assembly language software module by using the assembly language software module or by disassembling a binary code . . . ." More specifically, the final Office action alleges that "[t]he invention does not appear to perform the recited process by disassembling a binary code". P. 4, Jan. 06, 2009 final Office action. Applicants respectfully disagree.

Applicants respectfully point to the following paragraphs which provide some exemplary disclosure for the above claimed limitations in some embodiments. Applicants further note that these paragraphs are provided below for the ease of explanation and illustration only and are not intended to limit the scope of the claims or the subject matters of various embodiments of the invention.

For example, ¶ [0037] first discloses ""the assembler is parsed into a main data structure . . . ." ¶ 0036 further discloses that "[t]he accuracy of the method relies on the fact that the simulation model has the same behavior as the original software application. As long as the same assembler is used to generate the production executable and the simulation model, then this will hold true. Therefore, the same compiler should be used for both the production executable and the simulation model. As discussed above, this is not always possible. In this situation, generating the production executable from the simulation model output of the translator, rather than the assembler input maximizes the accuracy of the simulation model." (Emphasis added.) Moreover, ¶ [0031] teaches that "binary code is

disassembled into assembler, and this assembler is provided to the translator", the output of which is the "simulation model".

Applicants respectfully submit that these passages clearly show that generating the executable from the simulation model, which is expressed in a high-level programming language, and that a binary code is disassembled into the assembler which is the provided to the translator as input and thus provide clear support for at least the claimed limitation of "by using the assembly language software module (which is expressed in a high-level programming language) or by disassembling a binary code".

Other paragraphs, such as ¶¶ [0037]-[0038], [0050]-[0053], [0055], [0076], and [0082] provide clear support for the claimed limitation of a "time slot" and other limitations interrelating with the "time slot". ¶¶ [0010] and [0035]-[0036] further teach "accuracy".

Applicants respectfully submit that at least these paragraphs convey with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants invented and were in possession of the invention as now claimed in claim 55, and that these paragraphs clearly put the public in possession of what the application claims as the invention. As such, Applicants respectfully submit that these passages provide clear support for the claimed limitation of "processing, by using a processor, the data structure to refine accuracy . . . by generating the assembler-level software simulation model based on the assembly language software module by using the assembly language software module or by disassembling a binary code . . ." of claim 55 and thus satisfy the written description requirement of 35 U.S.C. § 112, first paragraph.

C. Claim 1 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description for the claimed limitation of "generating a software simulation model based at least in part upon the optimized assembler code by transforming a binary code into a high level language format . . .". More specifically, the final Office action alleges that "[w]hen a binary code is disassembled, the generated software simulation model does not appear to be based upon the assembler code that was created in the preceding limitations." P. 5, Jan. 06, 2009 final Office action. Applicants respectfully disagree.

Applicants respectfully point to the following paragraphs which provide some exemplary disclosure for the above claimed limitations in some embodiments. Applicants further note that these paragraphs are provided below for the ease of explanation and illustration only and are not intended to limit the scope of the claims or the subject matters of various embodiments of the invention.

For example, ¶ [0031] teaches that "binary code is disassembled into assembler, and this assembler is provided to the translator at step 230 . . . ." (Emphasis added.) Moreover, ¶ [0030] teaches that, in some embodiments, the "compiler generates an assembly-language representation of the software program ("assembler") at step 220. This assembler is fed into a translator at step 230. The translator translates the assembler into a simulation model, which comprises an assembler-level representation of the software program, expressed in a high-level programming language such as the C programming language." (Emphasis added.)

Applicants respectfully submit that these paragraphs clearly show that a binary code may be disassembled into the assembler which may then be provided to the translator, and that the translator translates the assembler into a simulation model.

Therefore, Applicants respectfully submit that at least these paragraphs convey with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants invented and were in possession of the invention as now claimed in claim 1, and that these paragraphs clearly put the public in possession of what the application claims as the invention. As such, Applicants respectfully submit that these passages provide clear support for the claimed limitation of "generating a software simulation model based at least in part upon the optimized assembler code by transforming a binary code into a high level language format . . ." of claim 1 and thus satisfy the written description requirement of 35 U.S.C. § 112, first paragraph.

Nonetheless, claim 1 is currently amended to recite "generating a software simulation model in a high level language format based at least in part upon the optimized assembler code by disassembling a binary code and by annotating the software simulation model . . ." to clarify what Applicants regard as the claimed invention as embodied in claim 1, without acquiescence in the cited basis for rejections or prejudice to pursue to the original claim 1 in a related application. Applicants respectfully submit that the current amendment has rendered the rejection moot.

D. Claim 9 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description for the claimed limitation of "generating a software simulation model by transforming a binary code into the software simulation model in a high level language format . . .". More specifically, the final Office action alleges that "[t]he invention does not appear to disassemble binary code into a simulation model as recited in the claim; rather, the specification appears to recite that binary code is disassembled into

assembler, which is then provided to the translator (citation omitted)." P. 5, Jan. 06, 2009 final Office action.

Applicants respectfully point to the following paragraphs which provide some exemplary disclosure for the above claimed limitations in some embodiments. Applicants further note that these paragraphs are provided below for the ease of explanation and illustration only and are not intended to limit the scope of the claims or the subject matters of various embodiments of the invention.

For example, ¶ [0031] teaches that "binary code is disassembled into assembler, and this assembler is provided to the translator at step 230 . . . ." (Emphasis added.) Moreover, ¶ [0030] teaches that, in some embodiments, the "compiler generates an assembly-language representation of the software program ("assembler") at step 220. This assembler is fed into a translator at step 230. The translator translates the assembler into a simulation model, which comprises an assembler-level representation of the software program, expressed in a high-level programming language such as the C programming language." (Emphasis added.)

To the extent that the simulation model in these paragraphs constitutes the claimed limitation of "a software simulation model". Applicants respectfully submit that these paragraphs provide clear support for the aforementioned claimed limitation.

Therefore, Applicants respectfully submit that at least these paragraphs convey with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants invented and were in possession of the invention as now claimed in claim 9, and that these paragraphs clearly put the public in possession of what the application claims as the

invention. As such, Applicants respectfully submit that these passages provide clear support for the claimed limitation of "generating a software simulation model based at least in part upon the optimized assembler code by transforming a binary code into a high level language format . . ." of claim 9 and thus satisfy the written description requirement of 35 U.S.C. § 112, first paragraph.

Nonetheless, claim 9 is currently amended to recite "generating a software simulation model in a high level language format by disassembling a binary code . . ." to clarify what Applicants regard as the claimed invention as embodied in claim 9, without acquiescence in the cited basis for rejections or prejudice to pursue to the original claim 9 in a related application. Applicants respectfully submit that the current amendment has rendered the rejection moot.

E. Claim 33 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description for the claimed limitation of "generating a software simulation model based at least in part upon the optimized assembler code by transforming a binary code into a high level language format . . .". More specifically, the final Office action alleges that "[w]hen a binary code is disassembled, the generated software simulation model does not appear to be based upon the assembler code that was created in the preceding limitations." Pp. 5-6, Jan. 06, 2009 final Office action. Applicants respectfully disagree.

Applicants respectfully point to the following paragraphs which provide some exemplary disclosure for the above claimed limitations in some embodiments. Applicants further note that these paragraphs are provided below for the ease of explanation and

illustration only and are not intended to limit the scope of the claims or the subject matters of various embodiments of the invention.

For example, ¶ [0031] teaches that "binary code is disassembled into assembler, and this assembler is provided to the translator at step 230 . . . ." (Emphasis added.) Moreover, ¶ [0030] teaches that, in some embodiments, the "compiler generates an assembly-language representation of the software program ("assembler") at step 220. This assembler is fed into a translator at step 230. The translator translates the assembler into a simulation model, which comprises an assembler-level representation of the software program, expressed in a high-level programming language such as the C programming language." (Emphasis added.)

To the extent that the assembler constitutes "the optimized assembler code", Applicants respectfully submit that these paragraphs clearly show that, in some embodiments, a binary code may be disassembled into the assembler which may then be provided to the translator, and that the translator translates the assembler into a software simulation model.

Therefore, Applicants respectfully submit that at least these paragraphs convey with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants invented and were in possession of the invention as now claimed in claim 33, and that these paragraphs clearly put the public in possession of what the application claims as the invention. As such, Applicants respectfully submit that these passages provide clear support for the claimed limitation of "generating a software simulation model based at least in part upon the optimized assembler code by transforming a binary code into a high level language

format . . ." of claim 33 and thus satisfy the written description requirement of 35 U.S.C. § 112, first paragraph.

Nonetheless, claim 33 is currently amended to recite "generating a software simulation model in a high level language format based at least in part upon the optimized assembler code by disassembling a binary code and by annotating the software simulation model . . ." to clarify what Applicants regard as the claimed invention as embodied in claim 33, without acquiescence in the cited basis for rejections or prejudice to pursue to the original claim 33 in a related application. Applicants respectfully submit that the current amendment has rendered the rejection moot.

III. Rejections of the Claims under 35 U.S.C. § 112, Second Paragraph

Claims 1-2, 4-22, 33-34, and 36-60 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

A. Claim 1:

(a) The final Office action alleges that the claimed limitation of "wherein the act of generating a software simulation by translating the assembler code or disassembling a binary code" lacks proper antecedent basis.

Applicants respectfully submit that claim 1 is currently to recite "wherein the act of annotating the software simulation model is performed during a time of the act of generating the software simulation model" and is thus believed to have provided proper antecedent basis for "the software simulation model". Applicants further respectfully submit that the definite

article "the" preceding the claimed limitation "act" definitely describes the claimed limitation of "generating a software simulation model" that was previously recited in claim 1. Moreover, the definite article "the" preceding the limitation of "software simulation model" in "the act of generating the software simulation model" provides proper antecedent basis for the claimed limitation of "software simulation model" which was previously recited in claim 1.

(b) The final Office action further purports that claim 1 may have contained grammatically incorrect claim language. In response, claim 1 is currently amended to recite the claimed limitation of "wherein the act of annotating the software simulation model is performed during a time of the act of generating the software simulation model".

(c) Claim 1 is currently amended to recite "generating a software simulation model . . . and by annotating the software simulation model with information related to hardware on which the software implementation runs based at least in part upon a result of the act of performing the performance analysis to capture a dynamic interaction" and is thus believed to have rendered the rejection moot.

Therefore, Applicants respectfully submit that the current amendment to claim 1 provides proper antecedent basis and thus satisfies 35 U.S.C. § 112, second paragraph. Applicants thus respectfully request withdrawal of the rejection and reconsideration of claim 1.

B. Claim 9:

(a) The final Office action further purports that claim 1 may have contained grammatically incorrect claim language. In response, claim 1 is currently amended to recite the claimed limitation of "wherein the act of annotating the software simulation model is performed during a time of the act of generating the software simulation model".

(b) Claim 1 is also currently amended to recite "wherein the software assembly code module comprises the binary code", and the current amendment is thus believed to have rendered the rejection moot.

Therefore, Applicants respectfully submit that the current amendment to claim 9 satisfies 35 U.S.C. § 112, second paragraph. Applicants thus respectfully request withdrawal of the rejection and reconsideration of claim 9.

C. Claim 16:

Claim 16 is currently amended to recite "wherein the act of generating the software simulation model further comprises gathering information from the source code module from which the software assembly code module was obtained" and is thus believed to have rendered the rejection moot.

Applicants thus respectfully request withdrawal of the rejection and reconsideration of claim 16.

D. Claim 33:

(a) Claim 33 is currently amended to recite "wherein the act of annotating the software simulation model is performed during a time of the act of generating the software simulation

model by disassembling the binary code" and is thus believed to have rendered the rejection moot.

(b) In addition, claim 33 is currently amended to recite "generating a software simulation model . . . and by annotating the software simulation model with information related to hardware on which the software implementation runs based at least in part upon a result of the act of performing the performance analysis to capture a dynamic interaction" and is thus believed to have rendered the rejection moot.

Applicants thus respectfully request withdrawal of the rejection and reconsideration of claim 33.

E. Claim 41:

(a) Claim 41 is currently amended to recite "wherein the act of annotating the software simulation model is performed during a time of the act of generating the software simulation model" and is thus believed to have rendered the rejection moot.

(b) Claim 41 is also currently amended to recite "wherein the software assembly code module comprises the binary code", and the current amendment to claim 41 is thus believed to have rendered the rejection moot.

Applicants thus respectfully request withdrawal of the rejection and reconsideration of claim 41.

F. Claim 55:

Claim 55 is currently amended to recite "wherein the act of associating is performed during a time of the act of parsing the assembly language software into a data structure" and is thus believed to have rendered the rejection moot.

Applicants thus respectfully request withdrawal of the rejection and reconsideration of claim 55.

CONCLUSION

Based on the foregoing, all claims are believed allowable, and an allowance of the claims is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at the number listed below.

Applicant(s) hereby explicitly retracts and rescinds any and all of the arguments and disclaimers presented to distinguish the prior art of record during the prosecution of all parent and related application(s)/patent(s), and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **7012162001**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **7012162001**.

Respectfully submitted,

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